

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6498

BILL NUMBER: HB 1075

NOTE PREPARED: Jan 19, 2010

BILL AMENDED: Jan 14, 2010

SUBJECT: Public Access Issues.

FIRST AUTHOR: Rep. Stilwell

FIRST SPONSOR: Sen. Gard

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Public Records and Open Door Laws*: This bill requires a public agency to: (1) allow inspection or copying; or (2) make copies; of a public record within a reasonable time after the request is received by the agency. It provides that the court may impose a civil penalty against: (1) an officer of a public agency or an individual employed in a management level position with a public agency; or (2) the public agency; for violating the public records law or the open door law. It provides that the court may impose a civil penalty of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. It also provides that a court may: (1) impose only one civil penalty against an individual in an action even if the court finds that the individual committed multiple violations; and (2) impose another civil penalty against an individual in a separate action. The bill provides that if an officer of a state or local government agency orders a management level employee to: (1) not give proper notice of a public meeting or executive session; or (2) deny or interfere with a person's request to inspect or copy a public document; the employee is not subject to a civil penalty for violating the statute.

The bill provides that a public agency may withhold personal information from public disclosure regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. The bill also provides that a public agency has the discretion whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.

Request for Notices: The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web

site (if the agency has an Internet web site). It provides that a court may not declare a governmental action void for failure to give notice by electronic mail or posting on the local government agency's web site, if the agency made a good faith effort to comply with the statute.

Review of Public Records In Camera: The bill requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. If a formal complaint is filed, it requires the Public Access Counselor to review public records in camera without redaction (excluding redacted information that is the work product of an attorney and records that the agency is prohibited by law from disclosing) to determine whether the redaction of the records violated the access to public records act. It provides that unredacted documents that are in the possession of the Public Access Counselor for in camera inspection are confidential while in the possession of the Public Access Counselor.

Education Fund for Public Access Counselor Program: The bill creates an Education Fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws.

Effective Date: July 1, 2010.

Explanation of State Expenditures: (Revised) *Public Records and Open Door Laws:* This bill could increase expenditures of any public agency if any officer or management-level employee of that agency knowingly and intentionally:

- (1) Fails to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Takes final action outside a regular meeting or special meeting.
- (3) Participates in a secret ballot during a meeting.
- (4) Discusses in an executive session subjects not eligible for an executive session.
- (5) Fails to prepare a memorandum of a meeting required by IC 5-14-1.5-4.
- (6) Participates in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.
- (7) Denies or interferes with a person's request for inspection or copying of a public record if the record is subject to disclosure by law.
- (8) Charges a copying fee that exceeds the amount permitted.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above. A court may only impose one civil penalty against an individual, even if the court finds that the individual committed multiple violations. The penalties are required to be deposited in the Education Fund established under the bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

Review of Public Records In Camera: This provision could increase costs for public agencies that are required to provide an in camera inspection index to the Public Access Counselor. The index is required to include the reasons and explanations of why the documents, or any part of the documents, are alleged to be exempt from disclosure. Any increase in costs will depend upon the extent to which formal complaints are filed regarding possible violations of the Public Records Act resulting from redacted public agency records.

Background Information - For purposes of the public records laws, "public agency" means the following:
(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or

authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power;

(3) Any entity or office that is subject to:

(A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the State Board of Accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the State Police Department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the Excise Police Division of the Alcohol and Tobacco Commission, conservation officers of the Department of Natural Resources, gaming agents of the Indiana Gaming Commission, gaming control officers of the Indiana Gaming Commission, and the Security Division of the State Lottery Commission.

(7) Any license branch staffed by employees of the Bureau of Motor Vehicles Commission under IC 9-16.

(8) The State Lottery Commission established by IC 4-30-3-1, including any department, division, or office of the Commission.

(9) The Indiana Gaming Commission established under IC 4-33, including any department, division, or office of the Commission.

(10) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the Commission.

Explanation of State Revenues: *Education Fund for Public Access Counselor Program:* Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the Treasurer of State and used to pay: (1) expenses of administering the fund; and (2) the administrative costs of training public officials and educating the public on the rights of the public and the responsibilities of public agencies under the public access laws.

Explanation of Local Expenditures: *Public Records and Open Door Laws:* Local units and agencies are included in the definition of public agency. Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.

Request for Notices: The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for

notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Any increase in expenditures should be minimal and will depend upon the number of people who request notices that were not previously receiving notices.

Review of Public Records In Camera: Local units and agencies are included in the definition of public agency. Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

Fiscal Analyst: Jessica Harmon, 232-9854.